THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION No.3831 OF 2005

ORDER:

This writ petition is filed seeking a declaration that the proceedings of the 1st respondent dated 7.7.2003, as well as the proceedings dated 24.11.2004, refusing to set aside the *ex parte* order, is arbitrary, illegal and in violation of the principles of natural justice.

The petitioner is a rice mill, which claims to have engaged employees not exceeding nine. Thus, according to the petitioner, the provisions of Employees' Provident Fund and Miscellaneous Provisions Act, 1952, are not applicable. However, the 1st respondent having made the provisions of the Act applicable to the petitioner with effect from 29.7.2000, made an assessment under Section 7A of the Act, for the period from June 2000 to May, 2003. Accordingly, an order dated 7.7.2003 was passed under Section 7A of the Act, assessing Provident Fund dues at Rs.85,722/- for the period from June, 2000 to May, 2003. In pursuance thereof, a recovery certificate dated 1.4.2004, was issued by the 2nd respondent, directing the petitioner to pay the said amount. Alleging that the petitioner failed to comply with the same, a warrant of attachment of immovable property was issued by the 2nd respondent on 13.7.2004. Having received the same, the petitioner filed W.P.No.15514 of 2004, seeking a declaration that the action of the 2nd respondent in issuing warrant of attachment was arbitrary and illegal. The contention of the petitioner in the said writ petition was that the impugned attachment was not based on any assessment under the provisions of the Act. It was also pleaded before this Court that in spite of a legal notice got issued by the petitioner, requesting to furnish all the particulars with regard to the assessment, the 2nd respondent did not respond. Having regard to the facts and circumstances of the case, this Court by Order dated

31.8.204, disposed of W.P.No.15514 of 2004, with a direction to the respondents to furnish all the particulars, within a period of two weeks, and till such particulars are furnished, not to proceed with the warrant of attachment.

It is not in dispute that subsequently, by letter dated 22.9.2004, the petitioner's counsel was informed that the assessment order was passed under Section 7A of the Act, on 7.7.2003. It was alleged in the said letter that the petitioner refused to receive the said order and, therefore, the same was returned undelivered on 31.7.2003, by the postal authority. It is stated that subsequently, recovery certificate dated 13.3.2004, was issued to the petitioner and based on the same, notice of demand dated 30.4.2004 was issued. However, the same was returned with the postal endorsement 'addressee was not available', and therefore, it was served through Enforcement Officer on 29.6.2004.

Thereafter, the petitioner filed an application under Section 7A(4) of the Act, before the 1st respondent, seeking to set aside the *ex parte* order dated 7.7.2003. In the affidavit, filed in support of the said application, it was stated that the version of the respondents in their letter dated 22.9.2004, that the petitioner refused to receive summons as well as assessment order dated 7.7.2003, was incorrect. On merits, it was contended that the provisions of the Act are not applicable to the petitioner-establishment and, therefore, it is not liable to pay the amount as assessed. It was also pleaded that it came to know about the order dated 7.7.2003 only on 28.9.2004 on receipt of letter from the respondents dated 22.9.2004 and, therefore, the said *ex parte* order passed under Section 7A of the Act, may be set aside.

The said petition was dismissed by the 1st respondent by order dated 24.11.2004, holding that the petition which was filed after the expiry of three months, specified under sub-section (4) of Section 7A of the Act, is barred by time, and that the petitioner failed to show any reason which prevented it from appearing in the enquiry under Section 7A of the Act. Hence, this writ petition, questioning the order under

Section 7A of the Act, dated 7.7.2003, as well as the order dated 24.11.2004, passed by the 1st respondent, rejecting the application to set aside the *ex parte* order.

I have heard the learned counsel for the petitioner as well as the learned counsel appearing for the respondents.

Though, the petitioner contended that neither the summons during the enquiry under Section 7A of the Act, nor the order dated 7.7.2003 were served on it, the record placed before this Court by the learned counsel for the respondents shows that the order dated 7.7.2003, passed under Section 7A of the Act, was dispatched to the petitioner by registered post. The returned cover contains an endorsement made by postal authorities that the addressee refused to receive and, therefore, returned to the sender. The record also shows that summons sent to the petitioner were also returned unserved with a similar endorsement by the postal authorities. In the light of the material available in the record, I am unable to agree with the contention of the petitioner that no summons were served on it and that it was also not aware of the assessment order dated 7.7.2003. In view of the endorsement made by the postal authorities, the refusal shall be deemed to be a valid service.

Under sub-section (4) of Section 7A of the Act, an employer who suffered an *ex parte* order of assessment, has to make an application to set aside such *ex parte* order within three months from the date of communication of such order. There upon, it is necessary for him to satisfy the officer that the show cause notice was not duly served, or that he was prevented by sufficient cause from appearing when the enquiry was held. In the case on hand, as observed above, it cannot be said that the petitioner was not served with any show cause notice. If that be so, the ignorance pleaded by the petitioner cannot be believed and, consequently, it cannot be held that the petitioner was prevented by any sufficient cause from appearing when the enquiry was held. Similarly, it cannot be held that the petitioner had no knowledge about the order of assessment, dated 7.7.2003. Since,

admittedly, application was filed long thereafter in November, 2004, as rightly held by the 1st respondent, the petition filed under Section 7A(4) of the Act, was barred by limitation. Hence, I do not find any justifiable reason to interfere with the order, dated 24.11.2004.

So far as order of assessment dated 7.7.203 is concerned, since the Act provides for an efficacious remedy of appeal under Section 7-I of the Act, it is for the petitioner to avail the said alternative remedy. Accordingly, I deem it appropriate to dispose of the writ petition granting leave and liberty to the petitioner to prefer an appeal against the order dated 7.7.2003 made under Section 7A of the Act, within a period of four weeks from the date of receipt of this order. If any appeal is preferred within the time stipulated above, the respondents shall entertain the same and decide on merits. It is also made clear that pending such appeal, the order dated 7.7.2003, shall not be given effect to, provided the petitioner deposits half of the amount demanded therunder, within a period of four weeks from today. No costs.

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(G. ROHINI, J.)

27th July, 2006.
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THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION No.3831 OF 2005

27th July, 2006.

Between:

M/s Balaji Rice Mill, Jankampet, Velpoor Mandal, Nizamabad district, represented by its proprietor- Sri Dau Dayal. .. Petitioner.

And

Employees Provident Fund Organisation, Sub-Regional Office, Nyalkal Road, Nizamabad, represented by its Assistant Provident Fund Commissioner and two others. .. Respondents.

THE HON'BLE Ms. JUSTICE G. ROHINI

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